*HON'BLE SRI JUSTICE P.S. NARAYANA

+ W.P.No.13776 of 2006

% 7-7-2006

G.Sunitha ..
Petitioner

Vs.

$ The Election Commissioner of
Andhra Pradesh, Hyderabad
and 3 others. ..
Respondents

<GIST:

>HEAD NOTE :

! Counsel for petitioner : Sri P.Giri Krishna

^ Counsel for respondent No.1 : Sri V.V.Prabhakar Rao
Counsel for Respondents 2 and 3: G.P. for Panchayat Raj

?CASES REFERRED :
1. 1996(2) ALD 200 (DB) = 1996(2) ALT 593.

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THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION NO.13776 of 2006

DATED: 07.07.2006

Between
G.Sunitha. .. PETITIONER

Versus

The Election Commissioner of
Andhra Pradesh, Hyderabad and 3 others. .. RESPONDENTS

WRIT PETITION NO.13776 of 2006

ORDER:

Heard the counsel on record.

2. The learned counsel representing the writ petitioner Sri P.Giri Krishna states that when the petitioner requested for recounting and made an application, the Returning Officer is not justified in declaring the result of the election. The learned counsel also had taken this Court through the relevant Rules and would contend that in the facts and circumstances of the case, the direction, which is prayed for in the Writ Petition, be granted or rule nisi to be issued and appropriate interim direction to be granted.

3. On the contrary, Sri Prabhakar Rao, learned Standing Counsel representing respondents 1 to 3, would maintain that inasmuch as the Returning Officer already had rejected the plea of the petitioner and in view of the fact that the result of the election also had been duly declared, the remedy available to the writ petitioner is only to approach the Election Tribunal and hence at this stage the Writ Petition cannot

be entertained.

4. The Writ Petition is filed praying for a writ, order or direction more particularly in the nature of Writ of Mandamus declaring the action of respondents 1 to 3 in not recounting the votes polled for ZPTC, Yadagirigutta Constituency of Nalgonda District on representation of the petitioner dated 4.7.2006 for recounting and the rejection of the representation made by the petitioner as illegal, arbitrary and against the principles of natural justice and the Rules of Conduct of Election Rules under A.P. Panchayat Raj Act and consequently direct the respondents 1 to 3 to recount the votes polled on 28.6.2006 for ZPTC, Yadagirigutta Constituency of Nalgonda District and pass such other suitable orders.

5. It is stated that at present the petitioner is Mandal President of Yadagirigutta Mandal Parishad, Nalgonda District and she had contested for ZPTC, Yadagirigutta as independent candidate. The polling took place on 28.6.2006 and the counting was conducted on 4.7.2006. In the said counting, 4th respondent was declared elected and he got 11836 votes whereas the petitioner got 11750 votes and the difference between the petitioner and the returned candidate, who was declared elected, was only 86 votes. Several other factual details relating to the total number of votes polled also had been narrated. It is also stated that the Returning Officer had rejected her plea for recounting on the ground that he was already tired by the process and that there may not be any discrepancy. It is also stated that the Returning Officer had issued a letter rejecting her plea on the ground that all the polling agents and candidates already had signed on the requisite papers and hence the recounting is not necessary. It is also stated by the writ petitioner that though the election can be challenged by way of Election Petition, inasmuch as the grievance is a genuine grievance and in view of the representation made, her request may be

considered.

6. In G.O.Ms.No.755, Panchayat Raj Department, dated 30.11.1994 as amended by G.O.Ms.No.80, Panchayat Raj and Rural Development Department dated 7.2.1995, the A.P. Panchayat Raj (Conduct of Elections of Members and Sarpanch of Gram Panchayats, Members of Mandal Parishads and Members of Zilla Parishads) Rules, 1994, hereinafter in short referred to as Election Rules, had been issued in exercise of the powers conferred under Section 268(1) of the A.P. Panchayat Raj Act 1994. Rule 35 of the said Rules dealing with recounting of votes, reads as hereunder:

> "**Recounting of votes**:
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> (1) After such announcement has been made under sub-Rule (7) of Rule 34, a candidate or, in his absence, his election agent or any of his counting agents may apply in writing to the Election Officer for recounting of the votes either wholly or in part stating the grounds on which, he demands such recount;
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> (2) On such an application being made, the Election Officer shall decide the matter and may allow the application in whole or in part or may reject it wholly if it appears to him to be frivolous or unreasonable;
>
> (3) Every decision of the Election Officer under sub-Rule (2) shall be in writing and contain the reason therefore;
>
> (4) If the Election Officer decides under sub-Rule (2) to allow recount of the votes either wholly or in part, he shall---
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> (a) arrange for the recounting in accordance with Rules 32 and 34;
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> (b) amend the result sheet in Form-17 to the extent necessary after such recount;
>
> (c) announce the amendment so made by him
>
> (5) After the total number of votes polled by each candidate has been announced under sub-Rule (4), the Election Officer shall complete and sign the result sheet in Form-17 and no application for a further or second recount shall be entertained thereafter".

7. This Court in CHINNA NARSAPPA VS. VENKATA REDDY

AND OTHERS[1] held that the scheme of the provisions of the Constitution as well as the A.P. Panchayat Raj Act and the Rules made thereunder as can be seen from Section 233 of the Act and the Rules is that any election to Gram Panchayat can be called in question by an Election Petition presented to such authority and in accordance with the reasons given thereunder. Rule 12(d) (iii) (iv) of the Election Tribunal Rules is wide enough to take cognizance of the complaint of the petitioner, namely, the declaration of result is contrary to Rule 35, and having regard to the scheme of the Constitution, the Act and the Rules and the fact that there is an effective alternative remedy by filing Election Petition available to the petitioner, the Writ Petitions are not maintainable. In view of the same, this Court is of the considered opinion that the present Writ Petition is devoid of merit.

8. Accordingly, the Writ Petition shall stand dismissed at the stage of admission. No costs. It is needless to say that petitioner is at liberty to proceed to the Election Tribunal if she is so advised.

07.07.2006

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[1] 1996(2) ALD 200 (DB) = 1996(2) ALT 593.